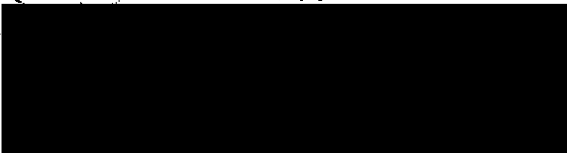




U.S. Department of Justice
Immigration and Naturalization Service

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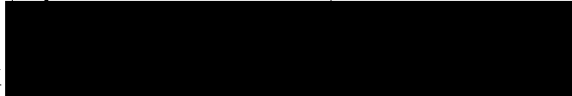
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-99 107 50056 Office: California Service Center Date:

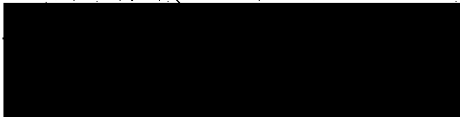
DEC 13 2000

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a biopharmaceutical company, specializing in antibiotics. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior research chemist. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher. The director also determined that the beneficiary's position does not constitute a qualifying research position.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. . . .

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

██████████ the petitioner's vice president of Human Resources, discusses the beneficiary's past and present work:

During the pursuit of his Ph.D., [the beneficiary] developed a regioselective sulfation method, performed the syntheses of several sulfated carbohydrates, and participated in their biological activity determination, and subsequently had six papers published describing this research. . . . The sulfated carbohydrates synthesized by [the petitioner] are critical for the specific development of carbohydrate-based drugs that would prevent deleterious inflammatory responses observed in rheumatoid arthritis, or in post-ischemic injuries. . . .

[The beneficiary] joined the Stanford University Chemistry Department to pursue postdoctoral studies. . . . At Stanford, [the beneficiary] successfully worked on the development and use of new chiral catalysts based on palladium (0) . . . [which] would allow the syntheses, at low cost, of new drugs with specific spatial arrangement. . . .

[The beneficiary's] research in the areas of organic chemistry has proven him to be a scientist capable of deep theoretical understanding of the problems at hand. At the same time, he is an outstanding experimentalist.

██████████ describes the beneficiary's work on the petitioner's "Cell Wall Project":

[The beneficiary] was charged with parallel responsibilities of discerning the relative and absolute stereochemistry at each stereocenter of the pacidamycin family of natural products, and

developing synthetic methods for total synthesis of biologically active analogs in this family. This work represents the first definitive stereochemical assignment of the pacidamycin/mureidomycin class of natural products, as well as the first total synthesis of biologically active analogs of the natural product.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

The petitioner observes that the beneficiary received a three year fellowship from the French Ministry of Education, awarded "because he had a very good result . . . with a rank of 5th of 46 students." Documentation shows that this fellowship was "for the preparation of [the beneficiary's] Ph.D." Graduate fellowships of this kind appear to be relatively routine. The petitioner has not shown that this fellowship is generally recognized as a major prize or award, or that the beneficiary has won any significant prizes while employed full-time (rather than as a graduate student).

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

██████████ states that the beneficiary's "research in the academic field has been cited in numerous leading reviewed international journals," and the petitioner submits evidence of 69 citations of the petitioner's work. These citations do not demonstrate that the articles containing the citations are "about" the petitioner's work, any more than the petitioner's own articles are "about" the work of M. Zebley, D.L. Van Vranken, E.A. Kabat, or any of the hundreds of other researchers whom the beneficiary himself has cited in his own articles. Such citations are simply a matter of academic honesty, acknowledging the source of information upon which the authors have based their own findings. These citations are more properly considered as evidence of the impact of the beneficiary's own published writings, addressed below in its own criterion.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner submits copies of several journal articles co-authored by the beneficiary, as well as the above-mentioned evidence of citations in other articles. The claimed figure of 69 citations is somewhat inflated, because some of the citations appear in subsequent articles by the beneficiary himself. Self-citation, while common in academia, is not a mark of independent recognition and most certainly does not qualify as published material written by others about one's work.

Nevertheless, even correcting for self-citation by the beneficiary, the petitioner has shown that the beneficiary has been a prolific author of published material which other researchers have consistently cited. That the articles containing the citations originate from several different countries demonstrates the international circulation of the beneficiary's articles.

The director has observed that the beneficiary was not the principal or sole author of the articles submitted. The lack of first-author credit does not wholly discredit the evidence, although it does have some degree of weight when determining the role the beneficiary has played in his research efforts. Regarding sole authorship, the director fails to acknowledge the inherently collaborative nature of modern scientific inquiry, in which researchers rarely labor in isolation. The sciences, in general, have reached such a level of narrow specialization that one scientist rarely possesses the full breadth of expertise (not to mention resources) necessary to conceive and execute a research project.

We conclude that the petitioner has satisfied this criterion, by establishing that he has written several internationally-published articles upon which, the citations show, other researchers have relied in their own efforts.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The petitioner submits letters from three witnesses to discuss the beneficiary's contributions to the field. Professor André Lubineau, the beneficiary's advisor at the Université de Paris-Sud, states:

[The beneficiary] concentrated in the synthesis of carbohydrates that could block the early steps of the inflammatory response. . . . The syntheses of these natural products required from 24 to 36 different chemical steps. Nevertheless, [the beneficiary] was able to obtain quantities

ranging from 30 to 60 milligrams of clean material for biological testing. . . . By this work he proved he is a remarkable experimentalist who could handle the pressure of long and extremely difficult syntheses as well as complicated structure determinations and tedious purifications.

[The beneficiary] then worked on the development of a regioselective sulfation reaction of β -galactosides, a moiety often found in biologically active carbohydrates. Such a method would be of great help for the synthesis of sulfated complex carbohydrates. . . . He successfully applied the new stannylene procedure to that effect and was able to resynthesize 200 milligrams of 3-sulfate Lewis' trisaccharide through a short, efficient, and elegant synthesis.

Professor Barry M. Trost of Stanford University is a member of the highly prestigious National Academy of Sciences and author of nearly six hundred published articles. Prof. Trost describes the beneficiary's work at Stanford:

[The beneficiary] demonstrated a totally new phenomenon in the ability to create chirality with the help of chiral organopalladium catalysts. Unlike any other area of organometallic chemistry, such an achievement can be done by forming many different types of bonds, not just one bond type. He synthesized two clinically important compounds, vigabatrine - used in the treatment of epilepsy and ethambutol - used in the treatment of tuberculosis with complete control of stereochemistry in very short practical sequences.

In this unique system, [the beneficiary] is creating the equivalent of a simplified synthetic enzyme. He has designed a new and novel active site for which the preliminary studies are extraordinarily exciting. Levels of control by phenomena not previously amenable to such control have already far exceeded anything previously achieved. This work has the prospect of creating a whole new paradigm for the synthesis of organic compounds.

Prof. Trost does not indicate how the beneficiary's work has already had an international impact on the field of chemistry. Whatever his acknowledged expertise, his assertions as to what will result in the future from the beneficiary's work are, necessarily, speculative.

The third witness is an official of the petitioning company; [REDACTED] Ph.D., is the petitioner's vice president of Chemistry and Preclinical Chemistry. Dr. Lee briefly discusses the beneficiary's university work and states:

The above training is directly applicable to projects that [the beneficiary] is undertaking at [the petitioning company]. This project requires substantial expertise with asymmetric syntheses and modifications of carbohydrates. The project required semi-synthetic modification of a mixture of natural product analogs, obtained from fermentation, to either retain or enhance bioactivity and enzymatic activity. . . . [The beneficiary] has been successful in developing directed combinatorial libraries for this program with desired bioactivity. . . . His rapid successes will be the framework for four to six high quality publications that will be submitted in early 1999.

██████████ does not indicate whether the beneficiary has actually completed any projects for the petitioner.

All of the above witnesses have worked directly with the beneficiary, in a supervisory or professorial capacity. The statute and regulations demand that the beneficiary has earned international recognition as an outstanding researcher. While we acknowledge the expertise of the witnesses, the petitioner has not shown that the opinions of those witnesses are shared by experts who have not directly worked with the beneficiary. If the beneficiary's reputation is largely limited to those who have supervised or collaborated with him, then he is not internationally recognized. The citations of the beneficiary's work show that his work has value to other researchers, but does not necessarily demonstrate that the citing researchers regard the beneficiary as outstanding.

The director denied the petition, stating that the petitioner has not established the significance of the beneficiary's awards and publications. The director noted that all of the witnesses have supervised the beneficiary, and therefore it is not clear that the beneficiary has earned a wider reputation, and that citations of the beneficiary's work are not published materials about that work in any meaningful sense. The director concluded that the petitioner has not shown that the beneficiary stands out "as one of the best researchers in his entire field."

Counsel argues that the regulations do not require the beneficiary to be "one of the best researchers in his entire field." The director's assertion is poorly worded, to say the least, but the record supports the director's finding that the beneficiary's recognition appears to be limited to those institutions where he has worked and studied.

Counsel observes the multiple citations of the beneficiary's work. The beneficiary's own published articles, however, contain dozens of citations. There is no indication that the petitioner or the beneficiary consider every one of the cited authors to be

outstanding in the field, nor is there any evidence that only outstanding, internationally recognized authors are cited by other researchers in journal articles. It is for this reason that published work cannot form the sole basis for a finding of eligibility.

With regard to the beneficiary's lack of first-author credit for his published work, the petitioner submits sworn statements in which the beneficiary claims to have been the "primary scientific contributor" behind a number of those articles. The record is silent as to whether the beneficiary's credited co-authors concur. In any event, as noted above, we acknowledge the beneficiary's authorship of internationally-published journal articles.

Counsel protests that the director "inexplicably denigrates the letters [submitted with the petition] as being written by 'close associates of the beneficiary.'" Counsel notes that the witnesses are experienced experts in their fields. Counsel then, however, acknowledges that the witnesses "have worked most closely with the beneficiary." It is no surprise that individuals who "have worked most closely with the beneficiary" are aware of the beneficiary's work. The standard in the statute and regulations is not praise from mentors and supervisors, but international recognition as an outstanding researcher. Regardless of their obvious expertise, these witnesses clearly do not constitute a representative cross-section of the field. To be "outstanding," the beneficiary must "stand out" not only among the petitioner's employees and the other students of his former professors, but among the international community of researchers. Counsel contends that the director has "improperly belittled the accomplishments of the beneficiary," but counsel has not shown that anyone other than the aforementioned professors and employers view the beneficiary's work as being especially significant in the field. The witnesses are certainly accomplished in the field; indeed, if anything, their credentials emphasize how much more accomplished they are in the field than the beneficiary is.

The director stated, without elaboration, that the record does not establish "that the beneficiary's research position with the petitioner can be equally comparable to a research position at a university or institution of higher education." The director offers no support or explanation for this finding. The description of the beneficiary's work for the petitioner appears to conform to the activities one would expect of a researcher specializing in biochemistry at a university or other academic institution. The beneficiary is not engaging primarily in engineering or manufacturing, but rather is conducting basic research intended to isolate and synthesize specific compounds for pharmaceutical use. We therefore withdraw the director's finding in this regard.

Beyond the above issues, another issue emerges from examination of the record. Section 203(b)(1)(B)(iii)(III) requires that a private employer seeking to employ the alien must have "achieved documented accomplishments in an academic field." The regulation at 8 C.F.R. 204.5(i)(3)(iii)(C) echoes this requirement. While the director stated that "[t]he petitioner asserts that they have achieved documented accomplishments," the director did not expressly concur with, or dissent from, the petitioner's assertion.

The record indicates that the petitioner has been seeking venture capital since its founding in 1992, and that the petitioner "is in the advanced stage of securing strategic alliances with pharmaceutical companies." As evidence of its documented accomplishment in the academic field, the petitioner cites "Exhibit V" of the initial filing, which consists of the petitioner's 1996 annual report and three published articles in trade media which discuss the company.

The petitioner's annual report discusses the corporation's aims but claims no actual research accomplishments. Because corporate annual reports are, by nature, geared toward investors rather than scientists, the focus is on business considerations rather than scientific ones.

An article from In Vivo: The Business and Medicine Report states:

On the one hand, [the petitioner] is creating a discovery tool kit capability that it hopes will dramatically widen its appeal within the restricted world of antibiotics companies. On the other, it is following a mid-term product-oriented track, trying through apparently traditional chemistry-based strategies to develop niche products small enough to escape the research interest of big pharma but important enough to attract their marketers' attention.

The above is a discussion of the petitioner's business strategy, rather than documentation of petitioner's accomplishments in the academic field. The article cautions that the above strategy "may not be possible," and states that the petitioner does not have the resources to develop drugs on its own.

The article lists the petitioner's "Lead Bacterial Targets" but does not indicate what progress, if any, the petitioner has actually made in that research area. Setting a goal is not a documented accomplishment in an academic field.

Other articles, from Pharmaceutical Engineering and Business Week, similarly discuss the petitioner's business goals but do not document any specific research accomplishments. The Business Week article describes the petitioner's research goals, and indicates

that experiments are underway, but an ongoing project is not synonymous with a documented accomplishment.

The petitioner has not submitted any published articles, patent documentation, or other first-hand documentation to establish documented accomplishments in the academic field as required by the regulations and the underlying statute. The petitioner's intent to do so in the future does not establish eligibility as of the petition's filing date.

The petitioner has shown that the beneficiary is a successful researcher, but the evidence does not consistently show that the beneficiary has won international recognition as an outstanding researcher; the admiration of those who have worked closely with him does not constitute such recognition, which by definition must be broader in scope than the universities and companies where the beneficiary has studied and worked. The record also offers no evidence that the petitioner, as of the March 1999 filing date, had any documented accomplishments in the academic field. Future goals and business strategies are not research accomplishments.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of chemistry. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought. Furthermore, without documented research accomplishments in the academic field, the petitioner cannot qualify to seek this classification for the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.